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## UNITED STATES DISTRICT COURT

Civil Docket 72-1746-FW

Jury demand date:

CAPTAIN FRANCIS A. ADAMS, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF

vs

SECRETARY OF THE NAVY, and COMMANDANT  
OF THE MARINE CORPS, DEFENDANTSComplt & Claim for Declaratory Relief &  
Applic for Writ of Mandamus Armed Forces

For Plaintiff:

Dougherty & Law 838-7222  
17291 Irvine Blvd, Tustin, Ca.

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 5 mailed	Clerk	7/31/72	55215	15—	8/1/72
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
	Witness fees				
Action arose at:	Depositions				

## DOCKET ENTRIES

DATE	PROCEEDINGS
7/31/72	Fld Complt & claim for declaratory relief & applic for writ of mandamus. Issd summs. Md JS-5. Armed forces.
8/ 1/72	Fld ord (FW) (WMB) transfrg action to the cal- ander of Judge Whelan for all fur procdgs, Cnsl ntfd.

## DOCKET ENTRIES

DATE	PROCEEDINGS
*7/31/72	Fld O.S.C. retable 8/9/72 (FW); Fld T.R.O. (FW); Hrg appln for OSC & TRO & ord TRO grntd & OSC why prelim inj should not issue set for 8/9/72, 1:30 p.m.
8/ 7/72	Fld defts' memo re: similar case, response w/re to opp.
8/ 9/72	Fld pltf's prelim inj re: that defts, their officers, agents, employees, & attys are hereby restrained pdng trial & ultimate disposition of this action, from involuntarily releasing the plf from active duty w/USMC w/o readjustment pay; Hrg OSC why prelim injtn should not issue & ord prelim injctn grntd.
9/12/72	Fld defts' supplmntl memo in oppstn to prelim injunctn.
9/14/72	Fld retn of summs.
9/15/72	Fld deft's trial memo; Fld plf's stip of facts.
9/19/72	Fld ord (FW) dissolving injunctn pdnte lite.
9/22/72	Fld pltf's supple trial brief.
9/25/72	Fld stip of Fact; Fld memo of decision.
10/ 3/72	LODGED plf's proposed judgmnt; LODGED plf's proposed fdngs of fact; LODGED plf's proposed concsns of law.
10/ 4/72	Fld deft's oppstn to lodged judgmnt.
10/ 5/72	Fld defts Ex Parte motn for ord & Ord (FW) shorteninf time to 10/6/72 at 1:30 pm; affid of Rex Heesman. (WL)

## DOCKET ENTRIES

DATE	PROCEEDINGS
*9/18/72	Trial (1st day) Mot plf to vacate prelim injunctn because of mootness grntd & ord prelim injunctn terminated. Stip of facts fld as part of evidenc bef crt. Cnsl to file stip of facts re amt due to plf by 9/25/72 Ord case stand submtd upon fng lf addnl stip of facts. eam.
10/ 6/72	Mot of deft ofr stay of execn of judgmnt pending appeal & ord execn judgmnt stayed 30 days.
10/27/72	Fld fndgs of fact; Fld concl of law; Fld jdgmt & ord thereon that pltf is entitled to readjustment pay. In the sum of \$9,273.00 & costs of suit. (Ent 10/31/72) Fld ord staying execution of jdgmt. (Ent 10/31/72) JS-6
11/ 3/72	Fld deft's NOTICE OF APPEAL, w/service thereon, copies to (FW) & R.E.
11/13/72	Fld deft's designation of recrd on appl. eam.
12/ 4/72	Rec'd fr C/A cy of ord of C/A staying jdgmnts to USDC pndg appeal. (gave to Ct Clerk NB and to ED)

## UNITED STATES DISTRICT COURT

Civil Docket 72-1618-FW

Jury demand date:

CAPTAIN ROBERT J. STENEMAN, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF

v8

SECRETARY OF THE NAVY, and COMMANDANT  
OF THE MARINE CORPS, DEFENDANTS

Compl't and Claim for Declaratory Relief  
and Application for Writ of Mandamus  
—For Reserve Military Readjustment  
—Dept of Navy

For Plaintiff:

Dougherty and Law 714-838-7222  
17291 Irvine Blvd., Tustin, Ca 92680

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 5 mailed	Clerk	7/17/72	55025	15—	7/18/72
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
	Witness fees				
Action arose at:	Depositions				

## DOCKET ENTRIES

DATE	PROCEEDINGS
7/17/72	Fld Complt and claim for declaratory relief and applic for Writ of mandamus, etc. Issd summs. Md JS-5.; Hrg appln for TRO & OSC & ord TRO grntd & OSC set for hrg 7/27/72, 10 am. Cnsl stip that TRO may remain in full force & effect until 7/31/72, 5 pm & ord hrg on OSC cont to 7/31/72, 2 pm.
7/17/72	Fld pltf's T.R.O.; Fld O.S.C. (FW).
7/27/72	Fld deft's memo in oppos.
7/31/72	Hrg, pt for prelim inj & ord TRO cont in full force & effect until 8/9/72. Ord mot for prelim inj submtd.
8/ 9/72	Fld plf's prelim inj re: that the Secretary of the Navy & Commandant of the Marine Corps etc. are hereby restrained pending trial & ultimate disposition of this action, from involuntarily releasing the plf from active duty w/USMC w/o readjustment pay. (FW).
8/11/72	Fld pltf's supplemtry memo in support of motn for prem injunction.
9/12/72	Fld defts' suplmntl memo in oppstn to prelim injunctn.
9/14/72	Fld retn of summs.
9/15/72	Fld defts' trial memo.; Fld stip OF FACTS for plf.
9/19/72	Fld ord (FW) dissolving injunctn pendnt lite.
9/22/72	Fld pltf's supple trial brief.
9/25/72	Fld stip of Fact.; Fld memo of decision.
10/ 3/72	LODGED plf's proposed judgmnt; LODGED plf's proposed fdngs of fact; LODGED plf's proposed conclusns of law.

## DOCKET ENTRIES

DATE	PROCEEDINGS
10/ 4/72	Fld deft's oppstn to lodged judgmnt.
10/ 5/72	Fld Ex Parte for ord shortening time to 10/6/72 at 1:30 pm; affd of Rex Heesman.
*9/18/72	Trial (1st day) Mot plf to vacate prelim injunctn because of mootness grntd & ord prelim injunctn terminated. Stip of facts fld as part of evidence bef crt. cnsl to file stip of facts re amt due to plf by 9/25/72. Ord case stand submtd upon flng of addnl of facts.
10/ 6/72	Hrg mot deft for stay pending appeal & ord execn of judgmnt stayed for 30 days. KH
10/26/72	Fld fndgs of fact; Fld concl of law;
10/27/72	Fld jdgmt & ord thereon that pltf is entitled to re-adjustment pay in the sum of \$9,273.00 & costs of suit. (Ent 10/31/72) Fld ord staying execution of jdgmt. (Ent 10/31/72) JS-6 ntfid prtys
11/ 3/72	Fld deft's NOTICE OF APPEAL, w/service thereon, copies to (FW) & R.E.
11/13/72	Fld defts' designation of record for appl. eam.

## UNITED STATES DISTRICT COURT

Civil Docket 72-1619-FW

Jury demand date:

CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF

v8

SECRETARY OF THE NAVY, and COMMANDANT  
OF THE MARINE CORPS, DEFENDANTS

Complt and Claim for Declaratory Relief  
and Application for Writ of Mandamus  
—For reserve military readjustment pay  
—Dept of Navy

For Plaintiff:

Dougherty and Law 714-838-7222  
17291 Irvine Blvd., Tustin, Ca 92680

Statistical Record	Costs	Date	Name or Receipt No.	Rec.	Disb.
J.S. 5 mailed	Clerk	7/17/72	55025	15—	7/18/72
J.S. 6 mailed	Marshal				
Basis of Action:	Docket fee				
	Witness fees				
Action arose at:	Depositions				

## DOCKET ENTRIES

DATE	PROCEEDINGS
7/17/72	Fld Complt and claim for declaratory relief and applic for Writ of Mandamus, etc. Issd summs. Md JS-5.

## DOCKET ENTRIES

DATE	PROCEEDINGS
7/19/72	Fld Ord (FW) (EC) transfg action to the calendar of Judge Whelan for all fur procdgs. Counsel ntfld.
*7/17/72	Hrg appln for TRO & OSC & ord TRO GRNTD & OSC set for hrg 7/27/72, 10 am. Cnsl stip & ord TRO cont in full force & effect until 7/31/72, 5 pm & hrg on OSC cont to 7/31/72, 2 pm.
7/17/72	Fld O.S.C. (FW) retable 7/27/72 10 am; Fld T.R.O. (FW)
7/27/72	Fld defts' memo re: incorporation of cases.
7/31/72	Hrg mot for prelim inj & ord TRO cont in full force., & effect until 8/9/72. Ord mot for prelim inj submted.
8/ 4/72	Fld plf's suplmntry memo in support of mot for prelim inj.
8/ 9/72	Fld plf's prelim inj re: that defts, their officers, agents, employees & attys are hereby restrained pending trial & ultimate disposition of this action, from involuntarily releasing the plf from active duty w/USMC w/o readjustment pay, (FW).
9/12/72	Fld defts' supplmntl memo in oppstn to prelim injunctn.
9/15/72	Fld retn of summs; Fld defts' trial memo; Fld plf's stip of facts.
9/19/72	Fld ord (FW) dissolving injunctn pendnt lite.
9/22/72	Fld pltf's supple trial brief.
9/25/72	Fld stip of Fact.; Fld memo of decision.
10/ 3/72	LODGED plf's proposed judgmnt; LODGED plf's proposed fdngs of fact; LODGED plf's proposed conclusns of law.

## DOCKET ENTRIES

DATE	PROCEEDINGS
10/ 4/72	Fld deft's oppstn to lodged judgmnt.
10/ 6/72	Fld defts Ex-Parte motn for ord & Ord for shorting time to 10/6/72; affid of Rex Heesman; Fld deft's not of motn retable 10/6/72 at 1:30 pm for stay of judgmnt pending appeal & motn.
*9/18/72	Trial (1st day) Mot plf to vacate prelim injunctn because of mootness grntd & ord prelim injunctn terminated. Stip or facts fld as part of evidence bef Crt. Cnsl to file stip of facts re amt due to plf by 9/25/72. Ord case stand submtd upon fng of addnl stip of facts. eam.
10/ 6/72	Mot deft for stay of execn judgmnt pending appeal & ord execn judgmnt stayed 30 days.
10/27/72	Fld fndgs of fact; Fld concl of law; Fld jdgmnt & ord thereon that pltf is entitled to readjustment pay in the sum of \$10,065.00 & costs of suit. (Ent 10/31/72) Fld ord staying execution of jdgmnt. (Ent 10/31/72) JS-6 ntfd prtys
11/ 3/72	Fld defts NOTICE OF APPEAL, w/service thereon, copies to (FW) & R.E.
11/13/72	Fld defts' designation of record for appl. eam.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1746-WMB

[Filed Jul, 31, 1:55 PM, '72, Clerk U.S. District Court  
Central Dist. of Calif. By RT]

CAPTAIN FRANCIS A. ADAMS UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

vs.

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

COMPLAINT AND CLAIM FOR DECLARATORY RELIEF AND  
APPLICATION FOR WRIT OF MANDAMUS

Plaintiff alleges:

I

This is an action brought pursuant to the Administrative Procedure Act, 5 USC § 701, through § 706, the Federal Declaratory Relief Act, 28 USC § 2201 and 28 USC § 1331, and 28 USC § 1361.

II

Plaintiff is now a commissioned officer in the United States Marine Corps Reserve on active duty with the United States Marine Corps, having served 4 years, 11 months and 16 days of continuous active duty on Monday, July 24, 1972.

III

Plaintiff is a resident of Orange County, California.

IV

On or about February of 1972 and again on or about April of 1972 plaintiff made a request to the COMMANDANT OF THE MARINE CORPS to be extended on ac-

tive duty with the United States Marine Corps for an indefinite period to be determined by the Marine Corps, beyond his original expiration of active service date. Said request was denied on May 11, 1972.

## V

On May 18, 1972, the COMMANDANT OF THE MARINE CORPS, by Naval Speedletter, ordered plaintiff's commanding general, Commanding General, Third Marine Aircraft Wing, Fleet Marine Force Pacific, Marine Corps Air Station, El Toro, Santa Ana, California, to release plaintiff from active duty on August 15, 1972; such orders to include "these orders constitute involuntary release from active duty not entitled to readjustment pay". A copy is attached as Exhibit "A" and incorporated herein by reference.

## VI

On or about May 30, 1972, plaintiff received orders from the United States Marine Corps involuntarily releasing him from active duty on August 15, 1972 without entitlement to readjustment pay. A copy is attached as Exhibit "B" and incorporated herein by reference.

## VII

Plaintiff is presently on active duty with the United States Marine Corps and has not been released from active duty as yet; such release, however, is imminent.

## VIII

10 United States Code § 687 entitles a member of a reserve component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty and who has completed immediately before his release, at least five years of continuous active duty, to a readjustment payment computed by multiplying his years of active service by two

months basic pay of the grade in which he is serving at the time of his release.

## IX

Subparagraph § 687(a) of 10 United States Code states that a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

## X

Plaintiff is entitled to readjustment pay in the approximate amount of \$10,000.00.

## XI

On January 22, 1971, the United States Court of Claims held in the case of *Arthur C. Schmid, Jr. v. United States* (Ct. CL. No. 493-69) that the plaintiff, a lieutenant in the United States Naval Reserve, was entitled to recover readjustment pay on account of his involuntary release from active duty after four years, six months and twenty-seven days of continuous active duty.

## XII

On November 9, 1971, the Supreme Court of the United States denied certiorari to the defendant, the United States in the Case of *Arthur C. Schmid, Jr. v. United States* (U.S. Supreme Court No. 71-361, 436 F2d 987).

## XIII

On June 15, 1972, plaintiff requested of Headquarters United States Marine Corps that his orders be modified to authorize payment of readjustment pay. On July 12, 1972, plaintiff was notified by Headquarters United States Marine Corps that his orders would not be so modified.

## XIV

Plaintiff has exhausted his administrative remedies and now seeks relief from this Court.

WHEREFORE, plaintiff prays judgment:

1. Ordering defendants to authorize modification of the orders releasing him from active duty to include his entitlement to readjustment pay under 10 USC § 687;
2. Ordering defendants to pay said readjustment pay in full;
3. That a preliminary injunction issue restraining defendants from involuntarily releasing plaintiff from active duty with the United States Marine Corps, pending judgment in this suit;
4. For all costs of suit;
5. For such other and further relief as to this Court may seem just and proper.

DOUGHERTY AND LAW

By /s/ William A. Dougherty  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1618-FW

[Filed Jul. 17, 2:27 PM, '72, Clerk U.S. District Court  
Central Dist. of Calif., By M. M.]

CAPTAIN ROBERT J. STENEMAN,  
UNITED STATES MARINE CORPS RESERVE, PLAINTIFF

vs.

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

COMPLAINT AND CLAIM FOR DECLARATORY RELIEF AND  
APPLICATION FOR WRIT OF MANDAMUS

Plaintiff alleges:

I

This is an action brought pursuant to the Administrative Procedure Act, 5 USC § 701 through § 706, the Federal Declaratory Relief Act, 28 USC § 2201 and 28 USC § 1331, and 28 USC § 1361.

II

Plaintiff is now a commissioned officer in the United States Marine Corps Reserve on active duty with the United States Marine Corps, having served 4 years, 10 months and 19 days of continuous active duty on Monday, July 17, 1972.

III

Plaintiff is a resident of Orange County, California.

IV

On or about January 31, 1972 plaintiff made a request to the COMMANDANT OF THE MARINE CORPS for

extension of his active duty with the United States Marine Corps for an additional period to be determined by the Marine Corps beyond his original expiration of active service date or, in the alternative, for augmentation into the regular Marine Corps as a career officer. On April 27, 1972, said request, in the alternative, was denied.

## V

On May 10, 1972, the COMMANDANT OF THE MARINE CORPS, by Naval Speedletter, ordered plaintiff's commanding general, Commanding General, Third Marine Aircraft Wing, Fleet Marine Force, Pacific, Marine Corps Air Station, El Toro (Santa Ana), California, to release plaintiff from active duty on August 1, 1972, such orders to include "These orders constitute involuntary release from active duty/not entitled to readjustment pay". A copy is attached as Exhibit "A" and incorporated herein by reference.

## VI

On or before August 1, 1972, plaintiff expects to receive the original orders referred to in paragraph V involuntarily releasing him from active duty on August 1, 1972 without entitlement to readjustment pay.

## VII

Plaintiff is presently on active duty with the United States Marine Corps and has not been involuntarily released from active duty as yet; such release, however, is imminent.

## VIII

10 United States Code § 687 entitles a member of a reserve component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty and who has completed immediately before his release at least five

years of continuous active duty, to a readjustment payment computed by multiplying his years of active service by two months basic pay of the grade in which he is serving at the time of his release.

## IX

Subparagraph § 687(a)(2) of 10 United States Code states that a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded.

## X

Plaintiff is entitled to readjustment pay in the approximate amount of \$10,000.00.

## XI

On January 22, 1971, the United States Court of Claims held in the case of *Arthur C. Schmid, Jr. v. United States* (Ct. Cl. No. 493-69) that the plaintiff, a lieutenant in the United States Naval Reserve, was entitled to recover readjustment pay on account of his involuntary release from active duty after four years, six months and twenty-seven days of continuous active duty.

## XII

On November 9, 1971, the Supreme Court of the United States denied certiorari to the defendant, the United States in the case of *Arthur C. Schmid, Jr. v. United States* (U.S. Supreme Court No. 71-361, 436 F2d 987).

## XIII

On May 31, 1972, plaintiff duly submitted a claim to the United States Marine Corps Finance Center, Kansas City, Missouri, for his readjustment pay. Said claim has not been paid.

## XIV

On June 20, 1972, plaintiff requested Headquarters, United States Marine Corps that his orders be modified to authorize payment of readjustment pay. His orders have not been so modified.

## XV

Plaintiff has exhausted his administrative remedies and now seeks relief from this Court.

WHEREFORE, plaintiff prays judgment:

1. Ordering defendants to authorize modification of the orders releasing him from active duty to include his entitlement to readjustment pay under 10 USC § 687;
2. Ordering defendants to pay said readjustment pay in full;
3. That a preliminary injunction issue restraining defendants from involuntarily releasing plaintiff from active duty with the United States Marine Corps, pending judgment in this suit;
4. For all costs of suit;
5. For such other and further relief as to this Court may seem just and proper.

DOUGHERTY AND LAW

By /s/ William A. Dougherty  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1619-EC

[Filed Jul. 17, 2:28 PM, '72, Clerk U.S. District Court  
Central Dist. of Calif., By M. M.]

**CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF**

*vs.*

**SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS**

**COMPLAINT AND CLAIM FOR DECLARATORY RELIEF AND  
APPLICATION FOR WRIT OF MANDAMUS**

Plaintiff alleges:

I

This is an action brought pursuant to the Administrative Procedure Act, 5 USC § 701 through § 706, the Federal Declaratory Relief Act, 28 USC § 2201 and 28 USC § 1331, and 28 USC § 1361.

II

Plaintiff is now a commissioned officer in the United States Marine Corps Reserve on active duty with the United States Marine Corps, having served 4 years, 10 months and 18 days of continuous duty on Monday, July 17, 1972.

III

Plaintiff is a resident of Orange County, California.

## IV

On or about March of 1972 plaintiff made a request to the COMMANDANT OF THE MARINE CORPS to be extended on active duty with the United States Marine Corps for an indefinite period to be determined by the Marine Corps, beyond his original expiration of active service date. Said request was denied on or about April of 1972.

## V

On or about May 2, 1972, plaintiff received orders from the United States Marine Corps involuntarily releasing him from active duty on August 1, 1972 without entitlement to readjustment pay. A copy is attached as Exhibit "A" and incorporated herein by reference.

## VI

Plaintiff is presently on active duty with the United States Marine Corps and has not been released from active duty as yet; such release, however, is imminent.

## VII

10 United States Code § 687 entitles a member of a reserve component who is released from active duty involuntarily, or because he was not accepted for an additional tour of active duty for which he volunteered after he had completed a tour of active duty and who has completed immediately before his release, at least five years of continuous active duty, to a readjustment payment computed by multiplying his years of active service by two months basic pay of the grade in which he is serving at the time of his release.

## VIII

Subparagraph § 687(a)(a) of 10 United States Code states that a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six month is disregarded.

20

IX

Plaintiff is entitled to readjustment pay in the approximate amount of \$10,000.00.

X

On January 22, 1971, the United States Court of Claims held in the case of Arthur C. Schmid, Jr. v. United States (CT. Cl. No. 493-69) that the plaintiff, a lieutenant in the United States Naval Reserve, was entitled to recover readjustment pay on account of his involuntary release from active duty after four years, six months and twenty-seven days of continuous active duty.

XI

On November 9, 1971, the Supreme Court of the United States denied certiorari to the defendant, the United States in the case of Arthur C. Schmid, Jr. v. United States (U.S. Supreme Court No. 71-361, 436 F2d 987).

XII

On June 20, 1972, plaintiff requested of Headquarters United States Marine Corps that his orders be modified to authorize payment of readjustment pay. His orders have not been so modified.

XIII

On February 4, 1972, plaintiff duly submitted a claim to the United States Marine Corps Finance Center, Kansas City, Missouri, for his readjustment pay. Said claim has not been paid.

XIV

Plaintiff has exhausted his administrative remedies and now seeks relief from this Court.

WHEREFORE, plaintiff prays judgment:

1. Ordering defendants to authorize modification of the orders releasing him from active duty to include his entitlement to readjustment pay under 10 USC § 687;
2. Ordering defendants to pay said readjustment pay in full;
3. That a preliminary injunction issue restraining defendants from involuntarily releasing plaintiff from active duty with the United States Marine Corps, pending judgment in this suit;
4. For all costs of suit;
5. For such other and further relief as to this Court may seem just and proper.

DOUGHERTY AND LAW

By /s/ William A. Dougherty  
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

[Filed Sep. 25, 1972, Clerk, U. S. District Court Central  
District of Calif.]

No. 72-1618-FW

CAPTAIN ROBERT J. STENEMAN, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

v.

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

No. 72-1619-FW

CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF

v.

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

No. 72-1746-FW

CAPTAIN FRANCIS A. ADAMS, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

v.

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

MEMORANDUM OF DECISION

In these three actions the cases came on for trial upon stipulated facts. The cases were submitted for decision. The Court has considered the facts and the law. The

Court will give judgment for each plaintiff in the amount set forth in the supplemental stipulation of facts applicable to his case which now has been filed and will order defendants to pay forthwith such amount to such plaintiff. The cases came on for trial on September 18, 1972, and the Court stated that they would stand submitted for decision after the filing of a stipulation in each of the cases setting forth the amount of money claimed by each plaintiff.

The basis of the Court's decision is that each of the plaintiffs had served for more than four and one-half years on active duty in the United States Marine Corps at the time set by defendants as termination date of the active duty service of each plaintiff. This Court concludes that the applicable statute, therefore, requires that each of the plaintiffs receive adjustment benefits upon being terminated by the United States Marine Corps.

The Court has jurisdiction over this matter in that it is a suit against the named defendants in their official capacity, and the suit is for an order adjudicating that plaintiffs are entitled to recover and that defendants make payment on the basis that the action of the defendants in denying the adjustment benefits to the plaintiffs is against the law, and that this Court has jurisdiction to review such erroneous action of defendants and that the Court has jurisdiction to order the payment of the amounts mentioned to plaintiffs respectively.

No injunction will be issued in this case for the reason that the need for injunction is now moot and the preliminary injunction heretofore entered in each of the cases has been discharged for mootness. The Court does not base its decision upon the fact that each of the plaintiffs has now served more than five years on active service for the reason that each of the plaintiffs has served in fact more than five years on active service only because of the issuance by this Court of preliminary injunction enjoining defendants from terminating each of such plaintiffs unless the adjustment benefits were paid coincidental with termination. The Court will order payment to plaintiffs forthwith or at the time of

their respective severance from active duty if they have not already been so severed.

No judgment shall be entered until the Court has signed a formal judgment.

Counsel for plaintiffs shall in each case prepare, serve and lodge findings of fact, conclusions of law, and judgment. This shall be done promptly. The basic facts and conclusions of law of the Court are set forth in this memorandum but the findings of fact and conclusions of law to be prepared by counsel for plaintiffs shall include details of fact and conclusions of law which are not included in this memorandum, and such findings of fact and conclusions of law are not to be inconsistent herewith.

DATED this 25 day of September, 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1746-FW

[Filed Oct. 27, 1972, Clerk U. S. District Court Central  
District of Calif.][Lodged Oct. 3, 10:18 AM '72, Clerk U.S. District Court  
Central Dist. of Calif., By —]CAPTAIN FRANCIS A. ADAMS, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

—v8.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

## FINDINGS OF FACT

1. This is an action against the named defendants in their official capacity seeking an order adjudicating that plaintiff is entitled to recover and that defendants make payment on the basis that defendants' denial of readjustment pay to plaintiff is against the law.
2. Plaintiff, an officer in the United States Marine Corps Reserve, served in excess of four and one-half, but less than five years of continuous active duty with the United States Marine Corps immediately prior to the date set by defendants for the termination of plaintiff's active duty.
3. At time of trial of this action plaintiff had served in excess of five years of continuous active duty with the United States Marine Corps.
4. During his tour of active duty with the United States Marine Corps, plaintiff unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date.
5. The Commandant of the Marine Corps disapproved plaintiff's request for an extension of active duty with the United States Marine Corps.

6. The Commandant of the Marine Corps ordered that the plaintiff be involuntarily released from active duty with the United States Marine Corps.

7. Plaintiff's release from active duty with the United States Marine Corps was, or if not yet effected, will be an involuntary release from active duty.

8. At the time of trial plaintiff's basic pay per month was \$927.30.

9. Plaintiff is entitled to readjustment pay upon his release from active duty with the United States Marine Corps in the sum of \$9,273.00.

10. Plaintiff exhausted his administrative remedies prior to filing the action herein.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1618-FW

[Filed Oct. 26, 1972, Clerk, U. S. District Court Central  
District of Calif.][Lodged Oct. 3 10:19 AM '72, Clerk U.S. District Court  
Central Dist. of Calif., By —]CAPTAIN ROBERT J. STENEMAN, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

—v8.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

## FINDINGS OF FACT

1. This is an action against the named defendants in their official capacity seeking an order adjudicating that plaintiff is entitled to recover and that defendants make payment on the basis that defendants' denial of readjustment pay to plaintiff is against the law.

2. Plaintiff, an officer in the United States Marine Corps Reserve, served in excess of four and one-half, but less than five years of continuous active duty with the United States Marine Corps immediately prior to the date set by defendants for the termination of plaintiff's active duty.

3. At time of trial of this action plaintiff had served in excess of five years of continuous active duty with the United States Marine Corps.

4. During his tour of active duty with the United States Marine Corps, plaintiff unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date.

5. The Commandant of the Marine Corps disapproved plaintiff's request for an extension of active duty with the United States Marine Corps.

6. The Commandant of the Marine Corps ordered that the plaintiff be involuntarily released from active duty with the United States Marine Corps.

7. Plaintiff's release from active duty with the United States Marine Corps was, or if not yet effected, will be an involuntary release from active duty.

8. At the time of trial plaintiff's basic pay per month was \$927.30.

9. Plaintiff is entitled to readjustment pay upon his release from active duty with the United States Marine Corps in the sum of \$9,273.00.

10. Plaintiff exhausted his administrative remedies prior to filing the action herein.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1619-FW

[Filed Oct. 27, 1972, Clerk, U. S. District Court Central  
District of Calif.]

[Lodged Oct. 3, 10:18 AM '72, Clerk, U.S. District Court  
Central Dist. of Calif., By —]

**CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF**

—v8.—

**SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS**

**FINDINGS OF FACT**

1. This is an action against the named defendants in their official capacity seeking an order adjudicating that plaintiff is entitled to recover and that defendants make payment on the basis that defendants' denial of readjustment pay to plaintiff is against the law.

2. Plaintiff, an officer in the United States Marine Corps Reserve, served in excess of four and one-half, but less than five years of continuous active duty with the United States Marine Corps immediately prior to the date set by defendants for the termination of plaintiff's active duty.

3. At time of trial of this action plaintiff had served in excess of five years of continuous active duty with the United States Marine Corps.

4. During his tour of active duty with the United States Marine Corps, plaintiff unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date.

5. The Commandant of the Marine Corps disapproved plaintiff's request for an extension of active duty with the United States Marine Corps.

6. The Commandant of the Marine Corps ordered that the plaintiff be involuntarily released from active duty with the United States Marine Corps.

7. Plaintiff's release from active duty with the United States Marine Corps was, or if not yet effected, will be an involuntary release from active duty.

8. At the time of trial plaintiff's basic pay per month was \$1,006.50.

9. Plaintiff is entitled to readjustment pay upon his release from active duty with the United States Marine Corps in the sum of \$10,065.00.

10. Plaintiff exhausted his administrative remedies prior to filing the action herein.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1746-FW

[Filed Oct. 27, 1972, Clerk U. S. District Court Central District of Calif.]

[Lodged Oct. 3, 10:19 AM '72, Clerk, U.S. District Court Central District of Calif., By —]

CAPTAIN FRANCIS A. ADAMS, UNITED STATES MARINE CORPS RESERVE, PLAINTIFF

—vs.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE MARINE CORPS, DEFENDANTS

CONCLUSIONS OF LAW

1. This action arises out of a claim under a law of the United States of America, specifically Title 10, United States Code § 687.
2. Title 28, United States Code § 1361 grants this Court original jurisdiction of this action in that plaintiff seeks to compel officers and employees of the United States to perform a duty owed to him.
3. The same § 1361 of Title 28, United States Code and Title 28, United States Code § 1346 grant this Court jurisdiction to order payment in the amount of \$9,273.00.
4. Title 5, United States Code § 701 through § 706 grant this Court jurisdiction to review the denial of benefits to plaintiff complained of herein and to compel payment by the named defendants acting in their official capacity for the United States of America. Plaintiff has exhausted his administrative remedies.
5. Subsection 687(a)(2) of Title 10, United States Code, which states "a part of a year that is six months or more is counted as a whole year and a part of a year that is less than six months is disregarded" must be in-

terpreted to refer to entitlement to or eligibility for readjustment pay as well as computation of the amount of readjustment pay due to a serviceman under the statute.

6. Under the computation provisions of Title 10, United States Code § 687, plaintiff's readjustment pay is computed by multiplying five years of active service by two months basic pay of the grade in which plaintiff is serving at the time of his release from active duty.

7. Under the provisions of Subsection 687(a)(2) of Title 10, plaintiff is entitled to receive readjustment pay at the time of his severance from active duty, he having served on active duty for more than four years and six months at the time set by defendants for the termination of plaintiff's active duty.

8. Where plaintiff during his tour of active duty unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date, he is entitled to readjustment pay upon his severance from active duty in the sum of \$9,273.00 when he has completed more than four years and six months on active duty prior to the time that is set as the date of his severance from active duty. He need not have served five years on active duty at the time set for his said severance in view of the language of Subsection 687(a)(2) of Title 10 that a part of a year that is six months or more is counted as a whole year.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1618-FW

[Filed Oct. 26, 1972, Clerk, U. S. District Court Central  
District of Calif.]

[Lodged Oct. 3, 10:19 AM '72, Clerk, U.S. District Court  
Central District of Calif., By —]

CAPTAIN ROBERT J. STENEMAN, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

—vs.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

CONCLUSIONS OF LAW

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terpreted to refer to entitlement to or eligibility for readjustment pay as well as computation of the amount of readjustment pay due to a serviceman under the statute.

6. Under the computation provisions of Title 10, United States Code § 687, plaintiff's readjustment pay is computed by multiplying five years of active service by two months basic pay of the grade in which plaintiff is serving at the time of his release from active duty.

7. Under the provisions of Subsection 687(a)(2) of Title 10, plaintiff is entitled to receive readjustment pay at the time of his severance from active duty, he having served on active duty for more than four years and six months at the time set by defendants for the termination of plaintiff's active duty.

8. Where plaintiff during his tour of active duty unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date, he is entitled to readjustment pay upon his severance from active duty in the sum of \$9,273.00 when he has completed more than four years and six months on active duty prior to the time that is set as the date of his severance from active duty. He need not have served five years on active duty at the time set for his said severance in view of the language of Subsection 687(a)(2) of Title 10 that a part of a year that is six months or more is counted as a whole year.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1619-FW

[Filed Oct. 27, 1972, Clerk U. S. District Court Central District of Calif.]

[Lodged Oct. 3, 10:18 AM '72, Clerk U.S. District Court Central District of Calif., By —]

**CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES MARINE CORPS RESERVE, PLAINTIFF**

—v8.—

**SECRETARY OF THE NAVY, and COMMANDANT OF THE MARINE CORPS, DEFENDANTS**

**CONCLUSIONS OF LAW**

1. This action arises out of a claim under a law of the United States of America, specifically Title 10, United States Code § 687.

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3. The same § 1361 of Title 28, United States Code and Title 28, United States Code § 1331 grant this Court jurisdiction to order payment in the amount of \$10,065.00.

4. Title 5, United States Code § 701 through § 706 grant this Court jurisdiction to review the denial of benefits to plaintiff complained of herein and to compel payment by the named defendants acting in their official capacity for the United States of America. Plaintiff has exhausted his administrative remedies.

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terpreted to refer to entitlement to or eligibility for readjustment pay as well as computation of the amount of readjustment pay due to a serviceman under the statute.

6. Under the computation provisions of Title 10, United States Code § 687, plaintiff's readjustment pay is computed by multiplying five years of active service by two months basic pay of the grade in which plaintiff is serving at the time of his release from active duty.

7. Under the provisions of Subsection 687(a)(2) of Title 10, plaintiff is entitled to receive readjustment pay at the time of his severance from active duty, he having served on active duty for more than four years and six months at the time set by defendants for the termination of plaintiff's active duty.

8. Where plaintiff during his tour of active duty unconditionally volunteered for an extension of his active duty beyond his original expiration of active service date, he is entitled to readjustment pay upon his severance from active duty in the sum of \$10,065.00 when he has completed more than four years and six months on active duty prior to the time that is set as the date of his severance from active duty. He need not have served five years on active duty at the time set for his said severance in view of the language of Subsection 687(a)(2) of Title 10 that a part of a year that is six months or more is counted as a whole year.

DATED this 26th day of October 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1746-FW

[Filed Oct. 27, 1972, Clerk, U. S. District Court Central  
District of Calif.][Entered Oct. 31, 1972, Clerk, U. S. District Court  
Central District of California, By — Deputy]CAPTAIN FRANCIS A. ADAMS, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

—vs.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

## JUDGMENT

This action having come on for hearing before the Court, Honorable Francis C. Whelan, District Judge Presiding, William A. Dougherty appearing for plaintiff and Assistant United States Attorney Rex Heeseman appearing for defendants, and the issues having been duly heard and a Memorandum of Decision having been duly rendered and Findings of Fact and Conclusions of Law having been made by the Court;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that plaintiff is entitled to readjustment pay under 10 U.S. Code § 687 in the sum of \$9,273.00; that judgment be entered in favor of plaintiff in said amount and that the Secretary of the Navy and Commandant of the Marine Corps and their officers, agents and employees and specifically, the Commanding General and the Disbursing Officer at Marine Corps Air Station, El Toro, California, pay plaintiff said amount forthwith or at the time of his severance from active duty if he has not already been so severed.

IT IS FURTHER ORDERED that plaintiff be granted costs of suit.

Dated: October 27, 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1618-FW

[Filed Oct. 27, 1972, Clerk, U. S. District Court Central  
District of Calif.][Entered Oct. 31, 1972, Clerk, U. S. District Court  
Central District of California, By — Deputy]CAPTAIN ROBERT J. STENEMAN, UNITED STATES MARINE  
CORPS RESERVE, PLAINTIFF

—vs.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

## JUDGMENT

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IT IS FURTHER ORDERED that plaintiff be granted costs of suit.

Dated: October 27, 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

No. 72-1619-FW

[Filed Oct. 27, 1972, Clerk, U. S. District Court Central  
District of Calif.]CAPTAIN MICHAEL WILLIAM YOUNGQUIST, UNITED STATES  
MARINE CORPS RESERVE, PLAINTIFF

—vs.—

SECRETARY OF THE NAVY, and COMMANDANT OF THE  
MARINE CORPS, DEFENDANTS

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IT IS FURTHER ORDERED that plaintiff be granted costs of suit.

Dated: October 27, 1972.

/s/ Francis C. Whelan  
United States District Judge

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

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No. 72-2633

DONALD C. CASS, APPELLEE

vs.

UNITED STATES OF AMERICA, APPELLANT

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Nos. 72-3028, 72-3029, 72-3030  
FRANCIS A. ADAMS, ROBERT J. STENEMAN,  
MICHAEL W. YOUNGQUIST, APPELLEES

vs.

SECRETARY OF THE NAVY, ET AL., APPELLANTS

[August 1, 1973]

72-2633—Appeal from the United States District Court, District of Montana, Helena Division  
72-3028) Appeal from the United States District Court, Central District of California  
72-3029) 72-3030)

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Before: MERRILL and CHOY, Circuit Judges, and  
CONTI,\* District Judge

CONTI, D.J.:

This case involves the interpretation of 10 U.S.C. 687 (a), which permits servicemen to receive readjustment payments upon release from the armed forces. Two is-

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\* Honorable Samuel Conti, United States District Judge, Northern District of California, sitting by designation.

sues are involved in this appeal: (1) Whether the "rounding provision" of subparagraph (2) of 10 U.S.C. 687(a) applies to reduce the eligibility requirement for readjustment pay; and (2) whether the preliminary injunction issued by the District Court in the Adams-Steneman-Youngquist cases would moot this appeal because they would now qualify under any interpretation of the statute.

These actions were instituted by reserve officers on active duty in the Armed Forces. Each had served more than four and a half years and less than five years. Cass was honorably and involuntarily discharged from the Army. Adams, Steneman and Youngquist, captains in the Marine Corps, were ordered to be involuntarily released from active duty under honorable circumstances, but obtained a preliminary injunction which prevented their release until after they had served more than five years. The preliminary injunction was then dissolved while their cases were still pending. In all the cases the trial courts found in favor of the plaintiffs.

With regard to the substantive issue of whether or not 10 U.S.C. 687(a)(2) was properly interpreted by the district court, it is the opinion of this court that it was not.

The relevant statute provides in pertinent part:

" . . . a member of a reserve component . . . who is released from active duty involuntarily . . . who has completed, immediately before release, at least five years of continuous active duty, is entitled to a readjustment payment computed by multiplying his years of active service . . . by two months' basic pay of the grade in which he is serving at the time of his release . . . For the purposes of this subsection—

(1) a period of active duty is continuous if it is not interrupted by a break in service of more than 30 days;

(2) a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded . . . "

The district courts ruled in favor of plaintiffs, following the rationale of *Schmid v. United States*, 436 F.2d 987 (Ct.Cls.) cert. denied 404 U.S. 951 (1971). In *Schmid* the court of claims decided that the rounding provision of 687(a)(2) that "a part of a year that is six months or more is counted as a whole year" applied not only for the purposes of calculating the amount of the readjustment pay owed servicemen eligible for payments, but also in determining whether the five year eligibility requirement was met. Thus, if appellees' position is correct, their time in service (more than four and a half years) was properly rounded off to five years in the district courts and they were thus eligible and entitled to readjustment payments under 10 U.S.C. 687(a). We disagree and reverse.

The concept of readjustment pay was originally made into law in 1956. That Act of July 9, 1956, 70 Stat. 517, 50 U.S.C. 1016(a) (1958 ed.) provided in pertinent part:

"A member of a reserve component who is involuntarily released from active duty after the enactment of this section and after having completed immediately prior to such release at least five years of continuous active duty, except for a break in service of not more than thirty days . . . is entitled to a lump-sum readjustment payment computed on the basis of one-half of one month's basic pay in the grade in which he is serving at the time of release from active duty for each year of active service ending at the close of the eighteenth year. *For the purpose of computing the amount of readjustment payment (1) a part of a year that is six months or more is counted as a whole year . . .*" (Emphasis added)

Thus, that Act clearly provided that the rounding provision applied only to the determination of the amount of payment, and not to the eligibility requirement. In 1962, the statute was codified into its present form.

The present form of the statute does not explicitly limit the rounding provisions to computation of the amount of

the benefits. However, the clause of the statute which sets the minimum eligibility at five years, appears to be clear on its face and not subject to the interpretation given it by the court in *Schmid*.

However, even if the statute is arguably ambiguous, the result is unchanged. The rounding provisions conflict with the clear statement that five years is required for eligibility, if the rounding provision applies to eligibility. The use of the rounding provision would serve no useful purpose in determining eligibility. Eligibility is defined in terms of a fixed duration under the statute. The rounding provision could only be applicable in a situation in which a serviceman had served between four and a half and five years. There is no apparent reason why Congress would choose such a circuitous method to determine eligibility.

An examination of the legislative history behind the 1956 and 1962 versions of the statute supports the interpretation argued by appellant. The senate hearings on the 1956 bill specifically considered and adopted the language which limited the rounding provision to the computation of the amount of the payment. 1956-2 U.S. Code Cong. & Ad. News, pp. 3068, 3070.

In 1962, Congress codified the readjustment payment laws. In the process the language that the rounding provision was limited to the computation of the amount of readjustment pay was deleted. However, the senate report on the new law stated that the bill "is not intended to make any substantive change in the existing law". Senate Report No. 1876, 87th Cong. 2d Sess., 1962 U.S. Code & Ad. News, p. 2456. It would be inconsistent with the above declaration for this court to construe that Congress intended to broaden the eligibility requirements. Therefore, we reverse on the substantive issue of interpretation of 10 U.S.C. 687(a).

With regard to the arguments of Adams, Steneman and Youngquist that the preliminary injunction issued by the district court in their cases served to make them eligible for readjustment benefits under any interpretation of the statute, we disagree.

The case of *Paul v. Seamens*, 468 F.2d 361 (1st Cir. 1972), held that a preliminary injunction designed to preserve the status quo, cannot count toward retirement benefits. In the case at bar, we have decided for appellant, and therefore the injunction in the district court was improperly issued, and cannot be relied upon to support eligibility for readjustment benefits.

The injunction created no additional rights in appellees that they did not have under the statute in question. Any other decision would allow appellants to "bootstrap" themselves into eligibility.

Therefore, the decisions of the district court are reversed.

SUPREME COURT OF THE UNITED STATES

No. 73-5661

FRANCIS A. ADAMS, ET AL., PETITIONERS

v.

SECRETARY OF THE NAVY, ET AL.

ON PETITION FOR WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

ON CONSIDERATION of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is consolidated with No. 73-604 and a total of one hour is allotted for oral argument.

January 7, 1974